

72 Am. Jur. 2d State and Local Taxation Nine XXXIX A Refs.

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy


XXXIX. General Considerations

A. In General

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West's Key Number Digest

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A.L.R. Index, Fractional Assessment

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A.L.R. Index, Taxpayers

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[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 60](#)

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72 Am. Jur. 2d State and Local Taxation § 604

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State and Local Taxation

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XXXIX. General Considerations

A. In General

§ 604. Definitions

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West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2410](#), [2411](#)

"Levy" has variety of meanings in law.¹ In its proper sense, it is a formal and official action of a legislative body invested with the power of taxation whereby it determines and declares that a tax of a certain amount, or of a certain percentage on value, will be imposed on persons and property subject thereto.² "Levying" has also been defined as the establishment and application of a rate of taxation upon the valuation of property, the result being a determination of the amount of tax owed.³ There must be a levy of taxes in order to have a valid tax.⁴ That is, taxes may not be assessed or collected until the legislature levies a tax.⁵ A "levy" is the legislative act, whether state or local, which determines that a tax will be laid.⁶

After a tax is once levied or imposed, further proceedings, such as extending, assessing, and collecting the tax, are administrative.⁷ While, strictly speaking, the "assessment" of a tax is an official estimate of the sums which are to constitute the basis of an apportionment of a tax between the individual subjects of taxation within the district,⁸ the term "assessment" as employed in a constitutional provision governing the assessment and taxation of property means the process of listing and valuing property for taxation purposes.⁹ However, an assessment embraces more than simply the amount; it includes the procedure on the part of the officials by which the property is listed, valued, and finally the proportion declared.¹⁰ Thus, a valid assessment is undoubtedly indispensable to the levy of a tax.¹¹

Observation:

A levy, which is a tax as opposed to an assessment, is subject to constitutional limitations and restrictions.¹²

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Footnotes

- 1 State ex rel. Indus. Services Contractors, Inc. v. County Com'n of Johnson County, 918 S.W.2d 252 (Mo. 1996).
 - 2 State ex rel. Indus. Services Contractors, Inc. v. County Com'n of Johnson County, 918 S.W.2d 252 (Mo. 1996).
 - 3 Killen v. Logan County Com'n, 170 W. Va. 602, 295 S.E.2d 689, 42 A.L.R.4th 627 (1982) (overruled on other grounds by, In re Tax Assessment of Foster Foundation's Woodlands Retirement Community, 223 W. Va. 14, 672 S.E.2d 150 (2008)).
 - 4 Price v. Drainage Dist. No. 17, Mississippi County, Ark., 302 Ark. 64, 787 S.W.2d 660 (1990).
 - 5 City of Boise v. Ada County, 147 Idaho 794, 215 P.3d 514 (2009).
 - 6 Certain Lots Upon Which Taxes Are Delinquent v. Town of Monticello, 159 Fla. 134, 31 So. 2d 905 (1947); Olson v. Oklahoma Tax Com'n, 1947 OK 58, 198 Okla. 607, 180 P.2d 622 (1947).
 - 7 In re Application for Judgment and Sale of Delinquent Properties for Tax Year 1989, 167 Ill. 2d 161, 212 Ill. Dec. 215, 656 N.E.2d 1049 (1995).
 - 8 Borrowdale v. Board of County Com'rs of Socorro County, 23 N.M. 1, 163 P. 721 (1916).
 - 9 State ex rel. Stephan v. Martin, 227 Kan. 456, 608 P.2d 880 (1980).
 - 10 State ex rel. Asotsky v. Regan, 317 Mo. 1216, 298 S.W. 747, 55 A.L.R. 773 (1927); Brophy v. Commonwealth, 134 Va. 250, 114 S.E. 782 (1922).
 - 11 American Sur. Co. v. Hamrick Mills, 191 S.C. 362, 4 S.E.2d 308, 124 A.L.R. 1147 (1939).
 - 12 Dukesherer Farms, Inc. v. Ball, 405 Mich. 1, 273 N.W.2d 877 (1979).
- As to the constitutional provisions regarding assessment and levy, see §§ 608, 609.

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XXXIX. General Considerations

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§ 605. Legislative authority

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West's Key Number Digest

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The levying of a tax is a purely legislative power,¹ and the assessment and collection of taxes must be based on legislative authority.² The legislature is vested with broad powers of taxation and may prescribe the conditions and methods of the assessment, levy, and collection of taxes³ in a manner provided by law.⁴

Taxes should not be assessed by any means other than a clear, definite, and unambiguous statement of legislative authority.⁵ There must be an enactment, by a regularly constituted legislative body, providing for the raising of money for the public use by a tax upon certain classes of persons, property, privileges, occupations, or acts.⁶ However, the true interpretation of the language of a special levy proposal is the meaning given to it by the county voters.⁷

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Footnotes

- ¹ [Opinion of the Justices](#), 379 So. 2d 939 (Ala. 1980).
- ² [New England Tel. & Tel. Co. v. City of Rochester](#), 144 N.H. 118, 740 A.2d 135 (1999).
- ³ [Ralston Purina Co. v. Board of Tax Review of Town of Franklin](#), 203 Conn. 425, 525 A.2d 91 (1987).
- ⁴ [Chevron U.S.A., Inc. v. State](#), 918 P.2d 980 (Wyo. 1996).
- ⁵ [Chevron U.S.A., Inc. v. State](#), 918 P.2d 980 (Wyo. 1996).
- ⁶ [Scottish Union & National Ins. Co. v. Bowland](#), 196 U.S. 611, 25 S. Ct. 345, 49 L. Ed. 619 (1905).

7 [Thomas v. Board of Ed., McDowell County, 164 W. Va. 84, 261 S.E.2d 66 \(1979\).](#)

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§ 606. Judicial control

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West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2410

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 60](#) (Complaint, petition, or declaration—For refund of taxes paid under protest—General form)

The assessment of taxes is in its nature a nonjudicial function.¹ Rather, the assessment and valuation of property are administrative functions,² and such functions may not be delegated to a court or judge.³ If, however, the taxing officials do not perform their duties in accordance with the law, the issue presented to the court is not the exercise of administrative judgment but the legality of their acts.⁴ Estimates of assets available, receipts, and expenditures which must be made before taxes are levied are matters which the legislature has left to the sound business judgment of the taxing authorities, and courts will not interfere therewith unless it appears that there has been an abuse of discretion.⁵ A court may interfere with the action of the taxing body only if the action was procured by fraudulent, corrupt, or illegal means; was in bad faith; was arbitrary, capricious, or a clear abuse of discretion; or was so manifestly wrong and prejudicial as to create the firm conviction that it resulted from a probable disregard of official duty.⁶ Further, a court will not hesitate to reverse on appeal a board of tax appeals decision that is based on an incorrect legal conclusion⁷ although it is not the function of a court to substitute its judgment on factual issues for that of the board of tax appeals.⁸

Observation:

The constitutional right to judicial review of an administrative decision concerning taxation is limited in scope.⁹ A court can never substitute its judgment for that of an administrative agency.¹⁰ The sole relief that a court may grant when an administrative decision is found to be unlawful is to vacate the decision and remand the matter for further determination.¹¹

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Footnotes

- 1 In re Barker's Estate, 63 Ill. 2d 113, 345 N.E.2d 484 (1976).
- 2 Alex R. Masson, Inc. v. County Assessor of Wyandotte County, 222 Kan. 581, 567 P.2d 839 (1977).
- 3 Hendrickson v. Creager, 245 U.S. 115, 38 S. Ct. 46, 62 L. Ed. 185 (1917).
As to the authority to levy taxes resting in the legislative body, see § 605.
As to the execution of the authority to levy taxes vesting in administrative tax officers, see § 619.
- 4 Gordon v. Hiett, 214 Kan. 690, 522 P.2d 942 (1974).
- 5 Lakefront Realty Corp. v. Lorenz, 19 Ill. 2d 415, 167 N.E.2d 236, 88 A.L.R.2d 816 (1960).
- 6 State ex rel. State Bd. of Tax Com'rs v. Marion Superior Court, Civil Division, Room No. 5, 271 Ind. 374, 392 N.E.2d 1161 (1979).
- 7 Nestle R&D Ctr., Inc. v. Levin, 122 Ohio St. 3d 22, 2009-Ohio-1929, 907 N.E.2d 714 (2009).
- 8 Soin v. Greene Cty. Bd. of Revision, 110 Ohio St. 3d 408, 2006-Ohio-4708, 853 N.E.2d 1165 (2006).
- 9 State ex rel. State Bd. of Tax Com'rs v. Marion Superior Court, Civil Division, Room No. 5, 271 Ind. 374, 392 N.E.2d 1161 (1979).
- 10 State ex rel. State Bd. of Tax Com'rs v. Marion Superior Court, Civil Division, Room No. 5, 271 Ind. 374, 392 N.E.2d 1161 (1979).
- 11 State ex rel. State Bd. of Tax Com'rs v. Marion Superior Court, Civil Division, Room No. 5, 271 Ind. 374, 392 N.E.2d 1161 (1979).

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XXXIX. General Considerations

A. In General

§ 607. Method of assessment, generally

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West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2416](#) to [2428](#)

As it is generally understood, the authority to "levy" includes necessarily an implied power to set the amount of the levy.¹ The legislature may prescribe the manner in which certain properties will be appraised in order to arrive at a fair market value,² and the method prescribed by it must be followed, unless shown to be impossible or impracticable in a particular case.³ However, a flaw in the assessment or collection procedure, no matter how serious from the taxpayer's point of view, will not make the exaction illegal under the state constitution.⁴ Defects in an assessment scheme cannot be cured by a sporadic correction of each individual assessment.⁵

Observation:

A tax levied on property which has been assessed at a value in excess of its actual value is not void.⁶

CUMULATIVE SUPPLEMENT

Cases:

Statute governing land use change tax (LUCT) authorized town's issuance of supplemental tax bills for individual lots in subdivision during current tax year; at beginning of current tax year, entire parcel, which had been classified as open space land, no longer qualified for current use assessment given that taxpayer had built road in subdivision. [N.H. Rev. Stat. Ann. §§ 75:1, 79-A:7, I-a, II\(f\)](#). [JMJ Properties, LLC v. Town of Auburn](#), 122 A.3d 977 (N.H. 2015).

[END OF SUPPLEMENT]

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Footnotes

- 1 [State ex rel. Indus. Services Contractors, Inc. v. County Com'n of Johnson County](#), 918 S.W.2d 252 (Mo. 1996).
- 2 [State, ex rel. Stephan v. Martin](#), 230 Kan. 747, 641 P.2d 1011 (1982).
- 3 [South Carolina Tax Com'n v. South Carolina Tax Bd. of Review](#), 278 S.C. 556, 299 S.E.2d 489 (1983).
- 4 [Tucker v. Holt](#), 343 Ark. 216, 33 S.W.3d 110 (2000).
- 5 [Tregor v. Board of Assessors of City of Boston](#), 377 Mass. 602, 387 N.E.2d 538 (1979).
- 6 [Xerox Corp. v. Karnes](#), 221 Neb. 691, 380 N.W.2d 277 (1986).

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B. Requirements

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Research References

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West's Key Number Digest, [Taxation](#)  [2104](#), [2105](#), [2418](#) to [2424](#), [2445](#), [2446](#), [2461](#)

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A.L.R. Index, Fractional Assessment

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A.L.R. Index, Taxes

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Forms

[Am. Jur. Legal Forms 2d § 238:12](#)

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XXXIX. General Considerations

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§ 608. Constitutional prerequisites

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West's Key Number Digest, [Taxation](#)  [2104](#), [2105](#), [2418](#) to [2424](#), [2445](#), [2446](#)

A levy which is a tax as opposed to an assessment is subject to constitutional limitations and restrictions.¹ In determining whether a constitutional taking occurs with regard to an assessment, the factors which are to be considered are²—

- whether the assessment was initiated by the government or by the owners of the assessed property.
- whether the government actively induced or promoted the assessment.
- whether the property of any nonconsenting landowners is subject to the assessment.
- whether the design of improvement was under the control of the assessed landowners or reflected their intentions and needs.
- whether the improvement was designed to yield substantial benefits to the public at large.

Observation:

A constitutional provision for a valid property tax establishes two requirements: under the valuation requirement, the tax levying authority must determine the market value of the property, and under the apportionment requirement, the taxing authority must then

apportion the tax equally according to the market value.³ The purpose of the two requirements is to equalize public burdens so that a taxpayer contributes to the entire tax burden in proportion to his or her share of the total value of all property subject to a tax.⁴

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Footnotes

- 1 [Dukesherer Farms, Inc. v. Ball, 405 Mich. 1, 273 N.W.2d 877 \(1979\).](#)
- 2 [Furey v. City of Sacramento, 780 F.2d 1448 \(9th Cir. 1986\).](#)
- 3 [Eastler v. State Tax Assessor, 499 A.2d 921 \(Me. 1985\).](#)
- 4 [Eastler v. State Tax Assessor, 499 A.2d 921 \(Me. 1985\).](#)

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B. Requirements

§ 609. Statutory provisions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2104](#), [2105](#), [2418 to 2424](#), [2445](#), [2446](#), [2461](#)

The imposition of state taxes is purely statutory, so taxes assessed must be within the statutory levy.¹ Tax assessments that are made outside of state law are illegal regardless of whether identifiable and acceptable methods of appraisal are used.² An illegal appropriation cannot be used in making a valid levy.³

A tax cannot be imposed without clear and express words for that purpose,⁴ and in considering the issues involving the levy of a tax, any doubt or ambiguity is resolved in favor of the taxpayer.⁵ If the right asserted in behalf of the tax or its collection is not clear, it must be denied.⁶ It must appear plainly from the words of the statute and cannot be sustained as within its spirit.⁷

Observation:

A "law providing for tax levies," required by a state constitution to take immediate effect upon its passage by the state legislature, is limited to actual self-executing levies of taxes and is not synonymous with laws "relating" to tax levies, or "pertaining" to tax levies, or "concerning" tax levies.⁸

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Footnotes

- 1 [Duncan Medical Services v. State ex rel. Oklahoma Tax Com'n](#), 1994 OK 91, 911 P.2d 247 (Okla. 1994).
As to the requirement that the assessment and collection of taxes must be based on legislative authority, see § 605.
- 2 [Inn Group Associates v. Booth](#), 593 A.2d 49 (R.I. 1991).
As to procedural defects in a levy or assessment, see § 680.
- 3 [In re Application of Rosewell](#), 159 Ill. 2d 393, 203 Ill. Dec. 239, 639 N.E.2d 559 (1994).
- 4 [Inhabitants of East Livermore v. Livermore Falls Trust & Banking Co.](#), 103 Me. 418, 69 A. 306 (1907);
[Olson v. Oklahoma Tax Com'n](#), 1947 OK 58, 198 Okla. 607, 180 P.2d 622 (1947).
- 5 [Dunhall Pharmaceuticals, Inc. v. State, Dept. of Finance and Admin.](#), 295 Ark. 483, 749 S.W.2d 666 (1988).
- 6 [Olson v. Oklahoma Tax Com'n](#), 1947 OK 58, 198 Okla. 607, 180 P.2d 622 (1947).
As to the general rule of strict construction whereby tax laws are to be construed strongly against the government and in favor of the taxpayer, see § 7.
- 7 [Olson v. Oklahoma Tax Com'n](#), 1947 OK 58, 198 Okla. 607, 180 P.2d 622 (1947).
As to the general rule of strict construction whereby tax laws are to be construed strongly against the government and in favor of the taxpayer, see § 7.
- 8 [State ex rel. Taft v. Franklin County Court of Common Pleas](#), 81 Ohio St. 3d 480, 1998-Ohio-333, 692 N.E.2d 560, 124 Ed. Law Rep. 1042 (1998).

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XXXIX. General Considerations

B. Requirements

§ 610. Mandatory and directory requirements

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West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2104](#), [2105](#), [2418](#) to [2424](#), [2445](#), [2446](#)

Statutes involving the constructive steps incident to taxation are deemed mandatory or directory depending upon whether the directions given to the officer are for the benefit of the taxpayer, e.g., to give the taxpayer notice and opportunity for a hearing, or for any other purpose important to the taxpayer.¹ Whether a particular statute is directory or mandatory depends upon the intention of the legislature, which is to be ascertained from a consideration of the entire act, its nature, its object, and the consequences that would result from construing it one way or the other.² Statutory requirements which are intended to serve primarily as guidelines for the orderly conduct of public business are more likely to be considered directory in tax cases.³ Thus, statutory provisions regarding the time period in which a board of county commissioners must perform its statutory duty in levying a property tax are directory.⁴ Likewise, a provision which fixes the time for the completion and return of assessments is directory rather than mandatory.⁵

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Footnotes

- ¹ [Kennecott Copper Corp. v. Salt Lake County](#), 575 P.2d 705 (Utah 1978).
- ² [Appeal of Baldwin](#), 153 Pa. Super. 358, 33 A.2d 773 (1943).
- ³ [City of Yakutat v. Ryman](#), 654 P.2d 785 (Alaska 1982).
- ⁴ [Kennecott Copper Corp. v. Salt Lake County](#), 575 P.2d 705 (Utah 1978).
- ⁵ [Appeal of Baldwin](#), 153 Pa. Super. 358, 33 A.2d 773 (1943).

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§ 611. Defects or errors in assessment

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Forms

[Am. Jur. Legal Forms 2d § 238:12](#) (Protest—Of tax payment)

Where a levy substantially complies with the law, a formal defect in the levy may be cured by a subsequent amendment.¹ Similarly, a harmless error in a tax levy may be amended.² An assessment made under an invalid statute is not beyond the reach of curative legislation, and such an assessment may be validated by later legislation if the legislature could have authorized the assessment under a proper statute in the first place.³ A law providing that the sum fixed by the assessors will be due, no matter what error or irregularity may be made in the assessment, is wanting in due process and unconstitutional.⁴

Observation:

A statute providing that in the event that an assessed valuation of property within county has been increased by 10% or more over the prior year's valuation the taxing authorities must revise the rates of the levy to the extent necessary to produce substantially the same

amount of taxes as previously estimated to be produced by the original levy was not unconstitutionally void on the theory that it established no guidelines for the determination of the meaning of phrase "substantially the same."⁵ A previous judicial construction of the phrase afforded a sufficient guide to the application of the statute.⁶

Practice Tip:

The taxpayer must specify the error of tax assessment in the notice of appeal to the board of tax appeals (BTA) for the BTA to have jurisdiction over the error.⁷ The jurisdiction of the BTA is limited to errors specified in the notice of appeal from the tax commissioner's final determination.⁸

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Footnotes

- 1 [Guess v. Riverside Farms, Inc., 340 So. 2d 6 \(Miss. 1976\).](#)
- 2 [Guess v. Riverside Farms, Inc., 340 So. 2d 6 \(Miss. 1976\).](#)
- 3 [Northern Wasco County People's Utility Dist. v. Wasco County, 210 Or. 1, 305 P.2d 766 \(1957\).](#)
[As to curative statutes as they relate to the valuation of property for tax purposes, see § 678.](#)
- 4 [Malone v. Williams, 118 Tenn. 390, 103 S.W. 798 \(1907\).](#)
- 5 [St. Louis-Southwestern Ry. Co. v. Cooper, 496 S.W.2d 836 \(Mo. 1973\).](#)
- 6 [St. Louis-Southwestern Ry. Co. v. Cooper, 496 S.W.2d 836 \(Mo. 1973\).](#)
- 7 [Skuratowicz v. Tracy, 80 Ohio St. 3d 52, 1997-Ohio-358, 684 N.E.2d 324 \(1997\).](#)
- 8 [Newman v. Levin, 120 Ohio St. 3d 127, 2008-Ohio-5202, 896 N.E.2d 995 \(2008\).](#)

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John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

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XXXIX. General Considerations

B. Requirements

§ 612. Presumption of validity; burden of proof

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West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2104](#), [2105](#), [2418](#) to [2424](#), [2445](#), [2446](#)

The law generally presumes that an assessor has performed his or her duty and has assessed all properties fairly and on an equal basis, and the taxpayer has the burden of proving otherwise.¹ In challenging a tax assessment ruling, the challenger has two presumptions to overcome: (1) the presumption that tax officials will do their duty in accordance with the law and not act unfairly and arbitrarily regarding the assessment of property and (2) the presumption that the taxing authority's valuations are correct.² Thus, in a proceeding for a correction of an erroneous tax assessment, the taxpayer is confronted with the prima facie³ presumption of validity attached to the decision of a tax commissioner and has the burden of proving that the assessment is contrary to law or that the commissioner abused his or her discretion and acted in an arbitrary, capricious, or unreasonable manner⁴ or that the assessment is not uniform in its application.⁵ When a taxpayer challenging the assessment comes forward with substantial evidence to the contrary, the presumption disappears.⁶ To overcome the presumption, a taxpayer must prove a true valuation different from the assessment with evidence that is definite, positive, and certain in quality and quantity,⁷ and the proof of such fact must be clear.⁸

The party challenging the interpretation of applicable law by the board of tax appeals (BOTA) has the burden to prove error, but if the BOTA's construction or application of that law is erroneous, the court on appeal must take corrective steps.⁹

CUMULATIVE SUPPLEMENT

Cases:

A county's presumptively valid tax assessment may be successfully challenged with credible evidence that the assessor's estimated market value is incorrect. M.S.A. § 271.06. [Guardian Energy, LLC v. County of Waseca](#), 868 N.W.2d 253 (Minn. 2015).

Dam owner failed to rebut presumption that town's valuation of flow easements, for property tax purposes, was valid, where dam owner's appraiser provided no testimony or evidence of actual per-acre value differing from that determined by town. [TransCanada Hydro Northeast, Inc. v. Town of Newbury](#), 2017 VT 117, 180 A.3d 843 (Vt. 2017).

Burden to overcome presumption of city's initial property tax appraisal cannot be met by simply impugning methods of city board of tax appeals or questioning its understanding of assessment theory or technique. [In re Bilmar Team Cleaners](#), 2015 VT 10, 114 A.3d 483 (Vt. 2015).

[END OF SUPPLEMENT]

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Footnotes

- 1 [American Airlines, Inc. v. County of San Mateo](#), 12 Cal. 4th 1110, 51 Cal. Rptr. 2d 251, 912 P.2d 1198 (1996).
- 2 [Fall River County v. South Dakota Dept. of Revenue](#), 1999 SD 139, 601 N.W.2d 816 (S.D. 1999).
- 3 [200 Levee Drive Ass'n, Ltd. v. County of Scott](#), 532 N.W.2d 574 (Minn. 1995).
- 4 [HealthSouth Corp. v. Levin](#), 121 Ohio St. 3d 282, 2009-Ohio-584, 903 N.E.2d 1179 (2009); [Com., Dept. of Taxation v. Lucky Stores, Inc.](#), 217 Va. 121, 225 S.E.2d 870 (1976).
- 5 [R. Cross, Inc. v. City of Newport News](#), 217 Va. 202, 228 S.E.2d 113 (1976).
- 6 [FMC Corp. \(Peroxygen Chemicals Div.\) v. Unmack](#), 92 N.Y.2d 179, 677 N.Y.S.2d 269, 699 N.E.2d 893 (1998).
- 7 [In re Custom Distribution Services Inc.](#), 224 F.3d 235 (3d Cir. 2000).
- 8 [In re Tax Assessment Against American Bituminous Power Partners, L.P.](#), 208 W. Va. 250, 539 S.E.2d 757 (2000).
- 9 [In re Genstler Eye Center & Clinic/Genstler Medical Care Facility](#), 40 Kan. App. 2d 411, 192 P.3d 666 (2008).

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A.L.R. Library

A.L.R. Index, Fractional Assessment

A.L.R. Index, Taxes

A.L.R. Index, Taxpayers

A.L.R. Index, Value and Valuation

West's A.L.R. Digest, [Taxation](#)  [2106](#), [2160](#), [2420](#), [2425](#)

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§ 613. Determination of rate or levy

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West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2106](#), [2160](#), [2420](#), [2425](#)

A.L.R. Library

[Inclusion of Intangible Asset Values in Tangible Property Tax Assessments](#), 90 A.L.R.5th 547

There cannot be an imposition of a tax without the amount or the rate being fixed.¹ Fixing the amount to be collected has the effect of fixing the rate and is a vital step in levying a tax.² An undetermined tax is in law no tax.³ Taxation on all real and tangible personal property subject to be taxed is required to be according to fair market value⁴ or at its actual value.⁵ For personal property tax purposes, the best method of determining value is the actual sale of such property on the open market and at arm's length between one who is willing to sell, but not compelled to do so, and one who is willing to buy, but not compelled to do so.⁶ If there is no assessed valuation, then the tax is constitutionally invalid as a direct tax on tangible personal property.⁷ The use of cost factors as the basis of a scheme for determining the full cash value of assessed property is not intrinsically arbitrary.⁸

Definition:

The term "property," for the purposes of a constitutional provision imposing a maximum allowable tax on a property's real market value and imposing a retrospective method of tax assessment, is not limited to whatever physically exists on the assessment date but rather refers to a specific unit of realty, with or without improvements, that is identified by an appropriate authority by tax lot number or by some other method.⁹

The principles required by the Constitution to be followed in determining taxable values of tangible personal property are set forth in the fair market value and uniformity clauses of the Constitution.¹⁰ Considerations of uniformity of assessment of real estate taxes should not be divorced from the concept of requiring all assessments of real estate to be at fair market value.¹¹ The two constitutional principles must be read and construed together.¹² Thus, a property tax assessment must include two distinct factual findings: (1) that the property was assessed at its fair market value and (2) that the assessed value was equitable; that is, the property was assessed at a relatively uniform rate with comparable property in the district.¹³

Caution:

The uniformity clause of some state constitutions may not require that real property taxes be related to value.¹⁴

CUMULATIVE SUPPLEMENT

Cases:

Taxpayer, a rent-to-own business whose majority of revenues came from making merchandise available to customers via rental purchase agreements, was primarily engaged in retail trade rather than lease services such that it was entitled to benefit of one-half-percent franchise-tax rate; 100 percent of taxpayer's merchandise was offered for sale, 97 percent of its merchandise, for which it received 90 percent of its revenues, was sold in an average of 20 months per item, the average number of rental-purchase agreements after which any given item was ultimately sold was three, and the total price that a customer paid for a given item decreased from one rental-purchase agreement to the next for that same item due to the item's then being considered used. [Tex. Tax Code Ann. § 171.002\(a\)\(b\)](#). [Rent-A-Center, Inc. v. Hegar](#), 468 S.W.3d 220 (Tex. App. Austin 2015), reh'g overruled, (July 27, 2015).

[END OF SUPPLEMENT]

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Footnotes

- 1 Thomas v. Board of Examiners of State, 122 Mont. 564, 207 P.2d 553 (1949).
- 2 State ex rel. Indus. Services Contractors, Inc. v. County Com'n of Johnson County, 918 S.W.2d 252 (Mo. 1996).
- 3 Thomas v. Board of Examiners of State, 122 Mont. 564, 207 P.2d 553 (1949).
- 4 Fulton County Home Owners Ass'n, Inc. v. Abbott, 230 Ga. 307, 196 S.E.2d 886 (1973).
- 5 Chief Industries, Inc. v. Hamilton County Bd. of Equalization, 228 Neb. 275, 422 N.W.2d 324 (1988).
- 6 Avco Corp. v. Limbach, 51 Ohio St. 3d 147, 555 N.E.2d 284 (1990).
- 7 McKay Buick, Inc. v. Spradling, 529 S.W.2d 394 (Mo. 1975).
- 8 Bret Harte Inn, Inc. v. City and County of San Francisco, 16 Cal. 3d 14, 127 Cal. Rptr. 154, 544 P.2d 1354 (1976).
- 9 Shatzer v. Department of Revenue, 325 Or. 211, 934 P.2d 1119 (1997).
- 10 R. Cross, Inc. v. City of Newport News, 217 Va. 202, 228 S.E.2d 113 (1976).
- 11 Board of Sup'rs of Fairfax County v. Leasco Realty, Inc., 221 Va. 158, 267 S.E.2d 608 (1980).
- 12 Board of Sup'rs of Fairfax County v. Leasco Realty, Inc., 221 Va. 158, 267 S.E.2d 608 (1980).
- 13 Chase v. Town of Machiasport, 1998 ME 260, 721 A.2d 636 (Me. 1998).
- 14 Contos v. Herbst, 278 N.W.2d 732 (Minn. 1979).

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§ 614. Surplus

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2106](#), [2160](#), [2425](#)

The cases considering the effect of an existing surplus of money or credit in making up a tax levy under a budget for a succeeding tax period are so directly or indirectly affected by particular provisions of statutes relating to the preparation of tax budgets that it is not feasible to attempt to lay down any rule of general applicability.¹ It is the duty of the excise board to treat as estimated surplus the amount by which it calculates the payments to be made during the current year on account of taxes levied for the preceding year, and as yet uncollected, will exceed the unpaid expenses for the latter year, and to deduct this surplus, if any, from the amount of the tax levy for the ensuing year.² Counties may set a millage rate intended to produce a surplus as long as the surplus is properly accounted for so as to create a balanced budget.³

Definition:

The term "available surplus" in a county budget law providing that the revenue section of the budget must set forth the estimated surplus at the close of the current fiscal year and that the county commissioners must fix the amount of the levies necessary to raise the amount of the estimated expenditures as finally determined, less the total of the estimated revenues from sources other than taxation, including available surplus, means any cash surplus remaining in the current expense fund at the beginning of the fiscal year, after payment of all outstanding obligations against the fund, which is available.⁴

Allowing a deduction for surplus parts in the valuation by the tax commission of a manufacturer's parts inventory subject to an ad valorem tax did not violate constitutional provisions mandating that the valuation be based on the nature and characteristics of the assessed property, even though the surplus parts were usable parts, where the parts were not expected to be used in manufacture for at least two years, and a prospective purchaser of the inventory would necessarily discount the surplus portion of the inventory which could not be readily sold.⁵

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Footnotes

- 1 [Weyerhaeuser Timber Co. v. Roessler, 2 Wash. 2d 304, 97 P.2d 1070, 126 A.L.R. 882 \(1940\).](#)
- 2 [Board of Com'rs of Le Flore County v. Central Nat. Bank of Poteau, 1935 OK 192, 171 Okla. 42, 41 P.2d 853 \(1935\).](#)
- 3 [Clayton County v. Sexton, 273 Ga. 150, 538 S.E.2d 737 \(2000\).](#)
- 4 [Weyerhaeuser Timber Co. v. Roessler, 2 Wash. 2d 304, 97 P.2d 1070, 126 A.L.R. 882 \(1940\).](#)
- 5 [O'Flaherty v. State Tax Com'n, 698 S.W.2d 2 \(Mo. 1985\).](#)

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§ 615. Uncollected taxes for previous years

[Topic Summary](#) | [Correlation Table](#) | [References](#)

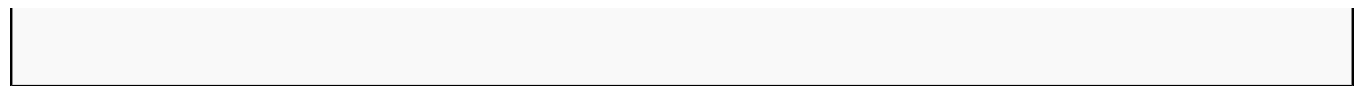
West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2106](#), [2160](#), [2425](#)

To the extent that property has been assessed at an assessment ratio lower than the ratio properly established by the assessor for the particular year, such property has escaped assessment.¹ An escaped assessment may be made in the amount of the deficiency for any year for which recovery is permitted by law.² Thus, in determining whether uncollected taxes for previous years are deductible in fixing the amount of taxes to be assessed for the current year, the rule apparently is that if a reasonable time has elapsed since the levying of prior taxes, and sufficient taxes have not been collected to meet the liabilities, although due diligence has been exercised, the taxing board has a lawful right to make a new levy to cover the deficits left by the prior tax levy.³ In setting forth the estimates of current assets available for appropriation, the estimates of taxes to be received from the levies of prior years must be net, after deducting amounts estimated to be sufficient to cover the loss and cost of collecting such taxes and also deferred collections thereof, and does not require unqualified acceptance, at full face value, by the municipal body levying the tax, of a comptroller's report listing as contingent assets a large amount of uncollected taxes covering more than 25 years, so as to compel them to be deducted in making such estimates, in the absence of any showing as to what, if anything, could be collected from such taxes.⁴

Practice Tip:

An item of "uncollected delinquent personal property tax" may not be included in the amount of a tax levy, under the heading of "loss and cost," where the evidence tends to show that, but little diligence has been used in collecting such taxes, the total thereof uncollected for one year being over 31% of the taxes as extended.⁵



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Footnotes

- 1 [Bauer-Schweitzer Malting Co. v. City and County of San Francisco](#), 8 Cal. 3d 942, 106 Cal. Rptr. 643, 506 P.2d 1019 (1973).
- 2 [Bauer-Schweitzer Malting Co. v. City and County of San Francisco](#), 8 Cal. 3d 942, 106 Cal. Rptr. 643, 506 P.2d 1019 (1973).
- 3 [People ex rel. McDonough v. Mills Novelty Co.](#), 357 Ill. 285, 192 N.E. 236 (1934).
- 4 [People ex rel. Nash v. S.A. Maxwell & Co.](#), 359 Ill. 570, 195 N.E. 26, 98 A.L.R. 494 (1935).
- 5 [People ex rel. Carr v. Chicago & N.W. Ry. Co.](#), 322 Ill. 150, 152 N.E. 575 (1926).

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§ 616. Additional levy

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West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2106](#), [2160](#), [2425](#)

In addition to his or her proportion of a laid tax, a taxpayer may be required to pay an additional amount to make up deficiencies caused by the neglect or inability of other taxpayers to pay their assessments.¹ A general taxpayer who has paid a tax including a certain proportion of the cost of a particular public improvement cannot complain if the legislature by subsequent enactment places the whole cost upon the general taxpayers.² However, tax officers will not be allowed to supply a want of diligence in the collection of a tax by a further levy.³

When applying a statute providing for the calculation of a tax reduction percentage for carryover property, the intent of the electorate in approving a tax levy should be effectuated on determining whether the levy consists entirely of millage levied for the first time or consists of a renewal of the levy in combination with an additional levy.⁴

Observation:

For the purposes of calculating a tax reduction percentage for carryover property, a board of tax appeals decision to treat a township levy for fire protection needs as an additional tax was neither unreasonable nor unlawful where voters, conscious of a need for additional revenue to maintain the township's fire protection system, adopted the proposed additional levy to remedy the inadequacy and did not adopt a renewal proposal.⁵

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Footnotes

- 1 [Klemm v. Davenport](#), 100 Fla. 627, 129 So. 904, 70 A.L.R. 156 (1930); [Gates v. Sweitzer](#), 347 Ill. 353, 179 N.E. 837, 79 A.L.R. 1151 (1932).
As to constitutional inhibitions against double taxation, see [§ 28](#).
As to the requirements of equality and uniformity, see [§ 102](#).
- 2 [Durrett v. Davidson](#), 122 Ky. 851, 29 Ky. L. Rptr. 401, 93 S.W. 25 (1906).
- 3 [Gates v. Sweitzer](#), 347 Ill. 353, 179 N.E. 837, 79 A.L.R. 1151 (1932).
- 4 [McNamara v. Kinney](#), 70 Ohio St. 2d 63, 24 Ohio Op. 3d 118, 434 N.E.2d 1098 (1982).
- 5 [McNamara v. Kinney](#), 70 Ohio St. 2d 63, 24 Ohio Op. 3d 118, 434 N.E.2d 1098 (1982).

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§ 617. Validity of levy or proposed levy

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West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2106](#), [2160](#), [2425](#)

The constitutional requirements of due process are satisfied where avenues for relief are open to the taxpayer at some stage of the assessment procedures providing him or her an opportunity to appear and contest the assessment.¹ Thus, an owner is not deprived of his or her property without due process of law by means of taxation if the owner had an opportunity to question its validity or the amount of such tax or assessment in some stage of the proceedings, either before that amount is finally determined or in a subsequent proceeding for its collection.² However, neither the fact that the number of persons entitled to notice of a proceeding for the judicial determination of the validity of municipal tax levy ordinances is very large nor the nature of the proceeding renders notice by publication in a newspaper of general circulation published in the municipality sufficient to satisfy the constitutional requirement of due process.³

Practice Tip:

Taxpayers, who had an opportunity to appear and did appear before the county board to contest assessed valuations of personal property but did not appeal the board's rescinding of the order of the reduction to the state board of tax appeals, were not denied due process.⁴



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Footnotes

- 1 [Shields Oil Producers, Inc. v. Russell County, 229 Kan. 579, 629 P.2d 152 \(1981\).](#)
- 2 [Farmers Co-op. Ass'n v. Boone County Bd. of Equalization, 213 Neb. 763, 332 N.W.2d 32 \(1983\).](#)
- 3 [Griffin v. Cook County, 369 Ill. 380, 16 N.E.2d 906, 118 A.L.R. 1157 \(1938\).](#)
- 4 [Shields Oil Producers, Inc. v. Russell County, 229 Kan. 579, 629 P.2d 152 \(1981\).](#)

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§ 618. Retrospective assessments; due process

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West's Key Number Digest, [Taxation](#)  [2106](#), [2160](#), [2420](#), [2425](#)

Although in the constitutions of a large majority of the states there are no constitutional provisions directly forbidding the enactment of retrospective laws, some state constitutions expressly prohibit not only the passage of any ex post facto law or law impairing the obligation of contracts but also any statute retrospective in its operation.¹ In the absence of such constitutional provisions directly forbidding the enactment of retrospective laws, laws relating to the assessment of taxes may have a retroactive effect so long as they do not interfere with vested rights.² In determining whether a taxing statute is a denial of due process because of its retroactive operation, it is necessary in each case to consider the nature of the tax and the circumstances in which it is laid before it can be said that its retroactive application is so harsh and oppressive as to transgress the constitutional limitations.³

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Footnotes

- ¹ [Am. Jur. 2d, Constitutional Law § 740](#).
As to the constitutional principles regarding retrospective laws, generally, see [Am. Jur. 2d, Constitutional Law § 735](#).
- ² [Kentucky Union Co. v. Commonwealth of Kentucky](#), 219 U.S. 140, 31 S. Ct. 171, 55 L. Ed. 137 (1911).
- ³ [Welch v. Henry](#), 305 U.S. 134, 59 S. Ct. 121, 83 L. Ed. 87, 118 A.L.R. 1142 (1938).

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D. Tax Assessors

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Research References

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West's Key Number Digest, [Statutes](#)  125(4)


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A.L.R. Index, Tax Assessors and Collectors

A.L.R. Index, Taxes

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[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 14](#)

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72 Am. Jur. 2d State and Local Taxation § 619

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West's Key Number Digest

West's Key Number Digest, [Statutes](#) 🔑 125(4)

West's Key Number Digest, [Taxation](#) 🔑 2433 to 2437

Assessing taxes is within the exclusive jurisdiction of the taxing authorities.¹ An assessor of taxation is an officer authorized by law to fix the valuation of property for the purpose of taxation.² Generally, assessors are regarded as independent public officers whose duties are prescribed by law.³ A state legislature has the authority to determine the method of selecting assessors whether by election or by appointment.⁴ The law does not impose on assessors requirements of qualifications respecting knowledge of values⁵ or title examinations.⁶

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Footnotes

- 1 [Parker County v. Spindletop Oil and Gas Co.](#), 628 S.W.2d 765 (Tex. 1982).
- 2 [Macaluso v. West](#), 40 Ill. App. 3d 392, 352 N.E.2d 382 (5th Dist. 1976); [Arace v. Town of Irvington](#), 75 N.J. Super. 258, 183 A.2d 104 (Law Div. 1962).
- 3 [Lorillard v. Town of Monroe](#), 11 N.Y. 392, 1854 WL 6012 (1854).
- 4 [Macaluso v. West](#), 40 Ill. App. 3d 392, 352 N.E.2d 382 (5th Dist. 1976).
- 5 [Washington Union Coal Co. v. Thurston County](#), 105 Wash. 208, 177 P. 774, 2 A.L.R. 1546 (1919).
- 6 [Dorman v. Minnich](#), 336 S.W.2d 500 (Mo. 1960).

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72 Am. Jur. 2d State and Local Taxation § 620

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Part Nine. Assessment and Levy

XXXIX. General Considerations

D. Tax Assessors

§ 620. Powers and duties

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  125(4)

West's Key Number Digest, [Taxation](#)  2105, 2432, 2440, 2445 to 2449

A tax administrator derives his or her authority to assess and collect taxes from the legislature.¹ Because assessors of taxes are public officers, they must act according to and within the authority given them by statute² and follow the lawful commands of the commissioner of revenue.³ They therefore cannot use their delegated powers to assess and collect taxes which the legislature could not lawfully impose.⁴

As the title of their office implies, their principal duty is to assess the value of all taxable property⁵ and to set assessment percentages.⁶ In fact, tax commissioners are given exclusive power to value and assess property⁷ and to value and assess public utility property.⁸ They have authority to reclassify property.⁹ A tax assessor has the right and authority not only to assess all real estate but also to prescribe the proper bookkeeping method to be used in determining the assessment.¹⁰

Their duties in ascertaining the value of property for purposes of taxation upon such evidence as they may obtain are judicial or quasi-judicial in nature,¹¹ requiring the exercise of judgment and discretion.¹² Thus, the levying of a tax is a purely legislative power while duties of various officers in relation to the assessment and collection of taxes are ministerial and sometimes judicial.¹³ However, in the execution of the power to tax, taxing officers must be able to show legislative authority for every levy of taxes.¹⁴

Observation:

A tax assessor is entrusted with the responsibility of assessing property for the purpose of determining its value for taxation while an auditor has the duty of calculating and assessing taxes once its taxable value has been determined by the assessor.¹⁵

CUMULATIVE SUPPLEMENT

Cases:

In tax assessment proceedings, county boards of commissioners are not restricted by the same rules judicial tribunals must follow. [RFM-TREI Jefferson Apartments, LLC v. Stark County Board of Commissioners](#), 2020 ND 204, 950 N.W.2d 160 (N.D. 2020).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Gott v. Norberg](#), 417 A.2d 1352 (R.I. 1980).
- 2 [Utah-Idaho Sugar Co. v. Salt Lake County](#), 60 Utah 491, 210 P. 106, 27 A.L.R. 874 (1922).
- 3 [Com. v. Town of Andover](#), 378 Mass. 370, 391 N.E.2d 1225 (1979).
- 4 [Gott v. Norberg](#), 417 A.2d 1352 (R.I. 1980).
- 5 [Los Angeles County v. Morrison](#), 15 Cal. 2d 368, 101 P.2d 470, 129 A.L.R. 443 (1940).
The county assessor's duty is to fairly assess parcels of property as they are subdivided by the county auditor for tax purposes. [Theobald v. County of Lake](#), 712 N.W.2d 180 (Minn. 2006).
- 6 [Cantrell v. Sanders](#), 1980 OK 43, 610 P.2d 227 (Okla. 1980).
- 7 [Hatchadorian v. Lindley](#), 21 Ohio St. 3d 66, 488 N.E.2d 145 (1986); [Liddell v. Heavner](#), 2008 OK 6, 180 P.3d 1191 (Okla. 2008).
- 8 [Hatchadorian v. Lindley](#), 21 Ohio St. 3d 66, 488 N.E.2d 145 (1986).
- 9 [Pilcher Land Corp. v. Johns](#), 677 So. 2d 746 (Ala. 1996).
- 10 [Pilcher Land Corp. v. Johns](#), 677 So. 2d 746 (Ala. 1996).
- 11 [Eyers Woolen Co. v. Town of Gilsum](#), 84 N.H. 1, 146 A. 511, 64 A.L.R. 1196 (1929).
- 12 [Ellis v. Frazier](#), 38 Or. 462, 63 P. 642 (1901); [City of El Paso v. Howze](#), 248 S.W. 99 (Tex. Civ. App. El Paso 1923), writ refused, (Mar. 28, 1923).
- 13 [Opinion of the Justices](#), 291 Ala. 262, 280 So. 2d 97 (1973).
As to levying as a legislative power, see § 605.
- 14 [Turner v. City of North Platte](#), 203 Neb. 706, 279 N.W.2d 868 (1979).
- 15 [Summit House Apartment Co. v. Hennepin County](#), 312 Minn. 358, 253 N.W.2d 127 (1977).

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72 Am. Jur. 2d State and Local Taxation § 621

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Part Nine. Assessment and Levy

XXXIX. General Considerations

D. Tax Assessors

§ 621. Powers and duties—Delegation to assistants

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#) 125(4)

West's Key Number Digest, [Taxation](#) 2105, 2432, 2440, 2445 to 2449

Generally, the duty of assessing property for taxation must be performed by the assessor in person.¹ However, while the assessment of a tax must be the act of the person chosen to act as assessor, it is not required that the officer personally perform every act connected with the assessment and the making of the tax roll.² Many of these acts are of a ministerial or clerical nature, involving no exercise of discretion and having no relation to any right of the taxpayer,³ and acts such as these the assessor may lawfully delegate unless forbidden by statute to do so.⁴

Although assessors may employ expert assistance, such as agents, statisticians, experts, attorneys, and such other assistants,⁵ the tax list is valid only if the assessor or board of assessors reviews all the property and exercises its own independent judgment in valuing the entire list.⁶

Practice Tip:

A statutory provision that no revaluation company may perform any valuation for a municipality for assessment purposes unless the company is certified by the board of assessment advisors refers only to the functions of the assessor in preparing the assessment list and does not apply to the board of tax review or to anyone who has been chosen to assist that board in its work.⁷

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Footnotes

- 1 [Clare v. Curran](#), 52 R.I. 196, 159 A. 835 (1932).
- 2 [Cansler v. Penland](#), 125 N.C. 578, 34 S.E. 683 (1899).
- 3 [Cansler v. Penland](#), 125 N.C. 578, 34 S.E. 683 (1899).
- 4 [State Tax Commission of Utah v. Katsis](#), 90 Utah 406, 62 P.2d 120, 107 A.L.R. 1477 (1936).
- 5 [State Tax Commission of Utah v. Katsis](#), 90 Utah 406, 62 P.2d 120, 107 A.L.R. 1477 (1936).
The county assessor was not required to seek the advice and consent of the county commission before hiring an employee to perform assessing and appraising duties where the employee was to be paid from designated moneys contained in a revolving valuation fund. [Harrison County Com'n v. Harrison County Assessor](#), 222 W. Va. 25, 658 S.E.2d 555 (2008).
- 6 [Connecticut Coke Co. v. City of New Haven](#), 169 Conn. 663, 364 A.2d 178 (1975).
- 7 [Chamber of Commerce of Greater Waterbury, Inc. v. Lanese](#), 184 Conn. 326, 439 A.2d 1043 (1981).

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72 Am. Jur. 2d State and Local Taxation § 622

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D. Tax Assessors

§ 622. Action by majority of board

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West's Key Number Digest

West's Key Number Digest, [Statutes](#) 125(4)

West's Key Number Digest, [Taxation](#) 2445 to 2449

The common-law rule is that in the absence of a contrary statutory provision a majority of a quorum, constituted of a simple majority of a collective body, is empowered to act for the body if all have had notice and opportunity to act and a quorum or the number required to be present by statute are present, even though a minority dissent,¹ applies to boards of assessors. Thus, where an assessment is required to be made by a board composed of several officers, the law intends that it be the joint act of all the members of the board, and, as a general rule, an assessment made by one or more members, without the concurrence of the rest, is invalid.² The death of a duly elected assessor does not deprive the surviving members of the board, constituting a majority thereof, of power to assess the taxes for the year, and taxes assessed by a board of assessors so constituted are valid.³ However, where a board of assessors must by law consist of a certain number of persons, and one of them fails to qualify, the others have no lawful authority to make the assessment.⁴

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Footnotes

- ¹ Am. Jur. 2d, Administrative Law § 82.
- ² McLendon v. Empire Mining Co., 199 Ala. 482, 74 So. 937 (1917).
- ³ Cooke v. Town of Scituate, 201 Mass. 107, 87 N.E. 207 (1909).
- ⁴ Carr v. Capwell, 30 R.I. 325, 75 A. 309 (1910).

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D. Tax Assessors

§ 623. Power to add to or increase assessment or rate certified

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#) 125(4)

West's Key Number Digest, [Taxation](#) 2445

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 14](#) (Complaint, petition, or declaration—Allegation—Administrative agency's refusal to abate tax assessment and wrongful addition of property to assessment roll)

Where the duties in extending taxes are merely of a ministerial or administrative character and there is no authority to levy taxes, there is no authority to increase the assessment or the rate above that certified.¹ In some instances, however, the authority of an officer charged with the duty of extending taxes is deemed to include power to add to the amount certified to him or her a sum to cover loss and cost of collection so long as the sum thus added is reasonable in amount.² However, in such case, it is proper to include an uncollected tax under "loss" only after a bona fide effort has been made to collect it.³

Observation:

A tax-extending officer has been held to be without power to add to the amount certified to him or her a sum to cover a deficiency in funds to meet bonded indebtedness.⁴

CUMULATIVE SUPPLEMENT

Cases:

Tax code provision prescribing that chief appraiser could change appraisal roll at any time, so long as change did not increase amount of tax liability, did not give appraiser complete and unilateral authority to correct issues of ownership of taxable property, regardless of whether ownership was determined by appraisal review board; to construe provision as such would effectively give appraisal district power to circumvent, bypass, and ignore procedures and jurisdictional principles articulated in tax code. [V.T.C.A., Tax Code §§ 25.25\(b\), 41.01 et seq., 42.01 et seq. Cameron Appraisal Dist. v. Sebastian Cotton & Grain, Ltd., 443 S.W.3d 212 \(Tex. App. Corpus Christi 2013\)](#), reh'g overruled, (Aug. 30, 2013).

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Footnotes

- 1 [St. Louis & S.F.R. Co. v. Thompson, 1912 OK 818, 35 Okla. 138, 128 P. 685 \(1912\).](#)
- 2 [People ex rel. Ghent v. Cleveland, C., C. & St. L. Ry. Co., 365 Ill. 443, 6 N.E.2d 851, 110 A.L.R. 119 \(1937\).](#)
- 3 [People ex rel. Ghent v. Cleveland, C., C. & St. L. Ry. Co., 365 Ill. 443, 6 N.E.2d 851, 110 A.L.R. 119 \(1937\).](#)
- 4 [People ex rel. Ghent v. Cleveland, C., C. & St. L. Ry. Co., 365 Ill. 443, 6 N.E.2d 851, 110 A.L.R. 119 \(1937\).](#)

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72 Am. Jur. 2d State and Local Taxation Nine XXXIX E Refs.

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XXXIX. General Considerations

E. Taxpayer's List; Taxable Assets

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Research References

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2422](#), [2463](#) to [2475](#), [2651](#)

A.L.R. Library

A.L.R. Index, Personal Property Tax

A.L.R. Index, Taxes

A.L.R. Index, Taxpayers

West's A.L.R. Digest, [Taxation](#)  [2422](#), [2463](#) to [2475](#), [2651](#)

Forms

[Am. Jur. Legal Forms 2d § 238:5](#)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 14, 21, 33](#)

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E. Taxpayer's List; Taxable Assets

§ 624. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2422](#), [2463](#) to [2475](#)

It is the responsibility of the taxpayer to provide the tax assessor with sufficient facts to value personal property for tax purposes.¹ The taxpayer's inventory of property operates as a monitoring device for the town, putting the town on notice when a taxpayer acquires or disposes of assets.² The contents of a list or return required to be filed by a taxpayer varies in the different jurisdictions, depending upon divergent statutory language and the different forms furnished.³ The object is to assist the assessors in ascertaining what taxable property the taxpayer has.⁴ A mistake in a tax return does not preclude a taxpayer from showing the actual facts and from having his or her tax liability determined by correct principles of law applicable to such facts where the taxpayer acted in good faith and did not intend to mislead the taxing authorities.⁵ A person or corporation cannot, however, be compelled to pay the taxes of another when such person or corporation has no assets of the person assessed in its hands from which the taxes can be paid.⁶

The tax commissioner is not bound by a taxpayer's listing of personal property in its annual tax reports.⁷

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Footnotes

- ¹ [United Illuminating Co. v. City of New Haven](#), 240 Conn. 422, 692 A.2d 742 (1997).
- ² [Rye Beach Country Club, Inc. v. Town of Rye](#), 143 N.H. 122, 719 A.2d 623 (1998).
- ³ [Barnes v. Jones](#), 139 Miss. 675, 103 So. 773, 43 A.L.R. 673 (1925).
- ⁴ [Travelers' Ins. Co. v. Board of Assessors](#), 122 La. 129, 47 So. 439 (1908).

- 5 Newman v. Dickson, 305 Ky. 279, 203 S.W.2d 33 (1947); Commissioner of Corporations and Taxation v.
Ford Motor Co., 308 Mass. 558, 33 N.E.2d 318, 139 A.L.R. 936 (1941).
- 6 Knoxville Traction Co. v. McMillan, 111 Tenn. 521, 77 S.W. 665 (1903).
- 7 As to a corporation's requirement to list stocks, bonds, and other securities it has issued, see §§ 157, 158.
Am. Fiber Sys., Inc. v. Levin, 125 Ohio St. 3d 374, 2010-Ohio-1468, 928 N.E.2d 695 (2010).

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E. Taxpayer's List; Taxable Assets

§ 625. Taxpayer's failure to compile list

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2422](#), [2471](#), [2474](#), [2651](#)

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 14](#) (Complaint, petition, or declaration—Allegation—Administrative agency's refusal to abate tax assessment and wrongful addition of property to assessment roll)

In the case where no account is filed, it is the right and duty of tax assessors to proceed to ascertain the nature and extent of such persons' taxable property from the sources of information at their command and to place a valuation upon it according to their best judgment.¹ One who has filed a return stating that he or she has no taxable property is not entitled to an abatement on account of an overassessment if he or she actually has some taxable property.² To make effective the power to levy and collect taxes, the State must necessarily have the power to discover and assess property on which to levy such taxes.³ If no penalty attached to the taxpayer's failure to return a true list of his or her property and to disclose its character and value to the officer whose duty it is to make the assessment, the taxpayer could readily conceal certain classes of property and suffer no loss when the property was discovered, for the State could then do no more than collect the taxes due.⁴

Practice Tip:

The privilege against self-incrimination does not extend to the right to refuse to file any tax return at all, and a blanket refusal to disclose any financial information on the basis of the Fifth Amendment is equivalent to filing no return.⁵ A person is not prohibited from claiming the Fifth Amendment privilege concerning a specific answer to selected individual questions, but he or she has the burden of asserting facts establishing that the answer may incriminate, or at least, it must be apparent from the context that such is the case.⁶ The claim of privilege is not allowed to avoid the disclosure of information as to tax liability.⁷ Claiming the right to refuse to disclose income information on the grounds that it will establish tax liability and thus the potential for criminal prosecution for disobedience to tax laws is a bootstrapping argument that could defeat the legitimate power of government to tax income.⁸

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Footnotes

- 1 [Van Alen v. Stein, 119 R.I. 347, 376 A.2d 1383 \(1977\).](#)
- 2 [Travelers' Ins. Co. v. Board of Assessors, 122 La. 129, 47 So. 439 \(1908\).](#)
- 3 [State v. Page, 100 W. Va. 166, 130 S.E. 426, 44 A.L.R. 501 \(1925\).](#)
- 4 [State v. Page, 100 W. Va. 166, 130 S.E. 426, 44 A.L.R. 501 \(1925\).](#)
- 5 [State, Dept. of Revenue v. Oliver, 636 P.2d 1156 \(Alaska 1981\).](#)
- 6 [State, Dept. of Revenue v. Oliver, 636 P.2d 1156 \(Alaska 1981\).](#)
- 7 [State, Dept. of Revenue v. Oliver, 636 P.2d 1156 \(Alaska 1981\).](#)
- 8 [State, Dept. of Revenue v. Oliver, 636 P.2d 1156 \(Alaska 1981\).](#)

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XXXIX. General Considerations

E. Taxpayer's List; Taxable Assets

§ 626. Tax ferrets

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2422, 2463 to 2475](#)

Forms

[Am. Jur. Legal Forms 2d § 238:5](#) (Employment agreement—Tax investigator—General form)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 33](#) (Complaint, petition, or declaration—To enjoin collection of tax based on assessment by illegally employed private assessors—Class action)

The question of authority to employ a tax ferret has almost invariably arisen with reference to the power of a county to employ such persons.¹ The power may be expressly given by statute,² and there is no apparent reason why the legislature may not authorize counties to make such contracts.³ Contingent fee contracts for private tax auditor services are not contrary to public policy.⁴

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Footnotes

- 1 [Disbrow v. Board of Sup'rs of Cass County, 119 Iowa 538, 93 N.W. 585 \(1903\); Murphy v. Swanson, 50 N.D. 788, 198 N.W. 116, 32 A.L.R. 82 \(1924\).](#)

- 2 State v. McCafferty, 1909 OK 291, 25 Okla. 2, 105 P. 992 (1909).
3 State v. McCafferty, 1909 OK 291, 25 Okla. 2, 105 P. 992 (1909).
4 Appeal of Philip Morris U.S.A., 335 N.C. 227, 436 S.E.2d 828 (1993).

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XXXIX. General Considerations

E. Taxpayer's List; Taxable Assets

§ 627. Inspection and examination of taxpayer's books

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West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2422](#), [2475](#)

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 21](#) (Complaint, petition, or declaration—Allegation—Assessor's wrongful addition of property to assessment roll)

The scope of the discovery power of the department of revenue is extensive.¹ The legislative power to levy taxes and prescribe regulations for the assessment and valuation of property for tax purposes includes the power to adopt reasonable regulations designed to make all assessable property bear its proportion of the tax burden and to prevent the concealment of taxable property, to determine the accuracy of tax returns, and otherwise to prevent tax dodging; inquisitorial powers may be granted to taxing agencies by legislative authority.² In addition, in determining the fair market value of a piece of land, a county assessor must seek out all information which would enable the assessor to properly fulfill his or her legal obligation.³ The privilege to be free from unreasonable searches and seizures is not available to shield a taxpayer's papers from scrutiny by government agents engaged in reasonable activities to determine taxes.⁴ Insofar as the prohibition against unreasonable searches and seizures can be said to apply at all, it requires only that the inquiry be authorized, the demand be not too indefinite, and the information sought be reasonably relevant.⁵

Observation:

A bank may be required to submit its books to assessing officers for examination for the purpose of ascertaining the names of its depositors and the amounts of their deposits in order that such deposits may be assessed against the depositors.⁶

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Footnotes

- 1 [State, Dept. of Revenue v. D. R. Johnson Lumber Co.](#), 289 Or. 679, 617 P.2d 603 (1980).
- 2 [Commonwealth v. U.S. Express Co.](#), 149 Ky. 755, 149 S.W. 1037 (1912); [Gange Lumber Co. v. Henneford](#), 185 Wash. 180, 53 P.2d 743, 103 A.L.R. 513 (1936).
- 3 [Kline v. McCloud](#), 174 W. Va. 369, 326 S.E.2d 715 (1984).
As to the prohibition against unreasonable searches and seizures, see [Am. Jur. 2d, Searches and Seizures §§ 12 to 14](#).
- 4 [Roberts v. Gulf Oil Corp.](#), 147 Cal. App. 3d 770, 195 Cal. Rptr. 393 (5th Dist. 1983).
- 5 [Roberts v. Gulf Oil Corp.](#), 147 Cal. App. 3d 770, 195 Cal. Rptr. 393 (5th Dist. 1983).
- 6 [Satterwhite v. State](#), 142 Ind. 1, 40 N.E. 654 (1895).

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F. Assessment Rolls and Books

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A.L.R. Index, Taxes

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West's A.L.R. Digest, [Taxation](#)  [2108](#), [2576](#), [2581](#) to [2584](#), [2587](#) to [2592](#), [2596](#) to [2598](#)

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 4, 5, 11, 21, 41, 49](#)

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72 Am. Jur. 2d State and Local Taxation § 628

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

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Part Nine. Assessment and Levy


XXXIX. General Considerations

F. Assessment Rolls and Books

§ 628. Necessity

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2108, 2576

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 4](#) (Petition or application—By taxpayer—To correct assessment roll—General form)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 5](#) (Petition or application—By assessor—To correct assessment roll—General form)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 11](#) (Complaint, petition, or declaration—To correct assessment roll—General form)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 21](#) (Complaint, petition, or declaration—Allegation—Assessor's wrongful addition of property to assessment roll)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 41](#) (Complaint, petition, or declaration—By taxpayers—To enjoin county officials from certifying county tax rolls until all taxable property placed on the ad valorem tax rolls)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 49](#) (Answer—Defense—Misnomer on assessment roll not ground to enjoin collection of tax)

The assessment roll is the list or roll of taxable property and persons completed, verified, and deposited by the assessor.¹ Procedural requirements for preparing the grand list of real estate for tax purposes are mandatory.² A fundamental element in a

legal assessment of taxes is that the property must be properly and accurately listed for taxation in books kept for the purpose and open to the public in such a manner as to inform interested persons of the property to be taxed, its owner, and the amount of the tax.³ The assessment book is prima facie evidence not only of the assessment of all taxes and of their amount but also of the fact that all forms of law in relation to the assessment and levy have been complied with and consequently of their validity.⁴

Observation:

The process for fixing the value of property for tax purposes involves three steps and is exclusive: (1) taxable property is put on the tax roll, (2) the value is determined, and (3) a review of such determination is through the tax board and the court system.⁵

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Footnotes

- 1 [Bogue v. Miles](#), 107 Colo. 320, 111 P.2d 1055 (1941).
- 2 [Punderson v. Town of Chittenden](#), 136 Vt. 221, 388 A.2d 373 (1978).
- 3 [City of Norfolk v. Stephenson](#), 185 Va. 305, 38 S.E.2d 570, 171 A.L.R. 1344 (1946).
- 4 [Application of Lome](#), 19 Misc. 2d 803, 192 N.Y.S.2d 787 (Sup 1959), order aff'd, 11 A.D.2d 773, 204 N.Y.S.2d 910 (2d Dep't 1960).
- 5 [Vogt v. Board of Review of Wapello County](#), 519 N.W.2d 395 (Iowa 1994).

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72 Am. Jur. 2d State and Local Taxation § 629

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State and Local Taxation

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Part Nine. Assessment and Levy

XXXIX. General Considerations

F. Assessment Rolls and Books

§ 629. Authentication or verification

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2108, 2596 to 2598

Verification of the assessment roll by the assessors is not necessary in the absence of a statutory requirement to that effect,¹ but in most jurisdictions, the verification of an assessment roll by the oath of the assessors is a statutory requirement of a mandatory nature, and if the assessors omit the verification altogether, or attach to the roll an affidavit which is defective in material particulars, the tax is not legally assessed² and will not support a sale, in the absence of any curative statute.³ However, the failure to attach to the assessment roll the assessors' oath to its correctness, as prescribed by law, is not of itself fatal to the validity of the tax in an equitable proceeding.⁴ It is sufficient if there is a substantial compliance with the statute.⁵ The prescribed form of oath is intended merely as a guide in the performance of the duties of the assessors, to insure system and uniformity throughout the state.⁶

The assessor's affidavit is not a certificate that the assessment roll contains no error but only that the assessor verily believes that the roll is complete and the valuations of property are just and equitable values.⁷ Statutory provisions which set forth the procedures for the certifications of revaluations and tax rolls by tax assessors are directory and not mandatory.⁸

Observation:

The certifications by a tax assessor of a townwide revaluation of all taxable real estate were directory, as opposed to mandatory, and as such, the tax assessor's failure to perform this directory instruction did not render the entire tax structure illegal or illegitimate,

nor did it trigger invalidity of the tax, and the taxpayer suffered no deprivation of a substantive right merely as a result of tardy certifications by the assessor.⁹

Practice Tip:

Tax assessors can and should certify a revaluation even when appeals may be pending, a circumstance that the assessor could note in the certification.¹⁰

CUMULATIVE SUPPLEMENT

Cases:

Sole avenue for property owners to obtain requested relief of reduction in parcels' tax assessments levied by town was via Real Property Tax Law, and thus town's motions to dismiss article 78 claims for failure to state a claim were properly granted; gravamen of property owners' claims was that valuation of respective properties was excessive and unequal, striking at the equality of town's application of methodologies rather than an attack on methodologies themselves. [N.Y. RPTL § 700 et seq. Groll v. Board of Assessment Review of Town of Delaware](#), 183 A.D.3d 1156, 124 N.Y.S.3d 654 (3d Dep't 2020).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Rio Vista Hotel & Imp. Co. v. Belle Mead Development Corp.](#), 132 Fla. 88, 182 So. 417 (1937).
- 2 [Daly v. Fisk](#), 104 Conn. 579, 134 A. 169 (1926); [Rio Vista Hotel & Imp. Co. v. Belle Mead Development Corp.](#), 132 Fla. 88, 182 So. 417 (1937).
- 3 [State Finance Co. v. Mather](#), 15 N.D. 386, 109 N.W. 350 (1906).
- 4 [Grand Forks County v. Fredericks](#), 16 N.D. 118, 112 N.W. 839 (1907).
- 5 [Daly v. Fisk](#), 104 Conn. 579, 134 A. 169 (1926).
- 6 [Daly v. Fisk](#), 104 Conn. 579, 134 A. 169 (1926).
- 7 [State ex rel. Brighton Square Co. v. City of Madison](#), 178 Wis. 2d 577, 504 N.W.2d 436 (Ct. App. 1993).
- 8 [Cummings v. Shorey](#), 761 A.2d 680 (R.I. 2000).
As to mandatory and directory requirements, see § 610.
- 9 [Cummings v. Shorey](#), 761 A.2d 680 (R.I. 2000).
- 10 [Cummings v. Shorey](#), 761 A.2d 680 (R.I. 2000).

72 Am. Jur. 2d State and Local Taxation § 630

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State and Local Taxation

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Part Nine. Assessment and Levy

XXXIX. General Considerations

F. Assessment Rolls and Books

§ 630. Designation of taxpayer

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2108, 2581 to 2584

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 49](#) (Answer—Defense—Misnomer on assessment roll not ground to enjoin collection of tax)

For the protection of the taxpayer, a real estate assessment must be made against the person liable for tax and in such person's name.¹ Thus, in making up the assessment rolls and books, care should be taken to correctly designate or describe the owner of the property or other person against whom the tax is assessed when the statutes so require.² An omission of the name of such person or an error in designating such person, of such character as to be misleading, renders the assessment void³ unless the defect is remedied by a curative statute,⁴ or the taxpayer has by his or her acts or conduct waived the defect or estopped himself or herself from asserting it.⁵ In order to affect the validity of an assessment, the error in listing the name of the owner must be material, that is, of such a character as to be likely to mislead the owner or any other person liable for the tax.⁶ If, under the role of idem sonans, the name inserted in the assessment roll is in law the name of the owner and person intended, the designation is sufficient and valid.⁷

Observation:

A tax assessment made after the adoption of a new name by a corporation is not void because it was made in the original name instead of the new name, in view of the statutory provision that each tract of land is chargeable with its own taxes no matter in whose name it may be assessed and that an error or omission in regard to the name of any person will not impair the validity of the assessment for taxes.⁸

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Footnotes

- 1 [Robtoy v. City of St. Albans, 132 Vt. 503, 321 A.2d 45 \(1974\).](#)
- 2 [Town of Hamden v. City of New Haven, 91 Conn. 589, 101 A. 11, 3 A.L.R. 1435 \(1917\).](#)
- 3 [People v. Whipple, 47 Cal. 591, 1874 WL 1307 \(1874\).](#)
- 4 [Smith v. Dwight, 80 Or. 1, 156 P. 573 \(1916\).](#)
[As to curative statutes, generally, see § 678.](#)
- 5 [Town of Orange v. City of Barre, 95 Vt. 267, 115 A. 238 \(1921\).](#)
[As to waiver or estoppel, see § 695.](#)
- 6 [Smith v. Dwight, 80 Or. 1, 156 P. 573 \(1916\); Town of Orange v. City of Barre, 95 Vt. 267, 115 A. 238 \(1921\).](#)
- 7 [Burrows v. Hagerman, 159 Fla. 826, 33 So. 2d 34 \(1947\).](#)
[As to idem sonans, see Am. Jur. 2d, Name §§ 60 to 63.](#)
- 8 [National Cemetery Ass'n of Missouri v. Benson, 344 Mo. 784, 129 S.W.2d 842, 122 A.L.R. 893 \(1939\).](#)

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72 Am. Jur. 2d State and Local Taxation § 631

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Part Nine. Assessment and Levy

XXXIX. General Considerations

F. Assessment Rolls and Books

§ 631. Description of property

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2108, 2587 to 2592](#)

The description of real estate in a tax assessment, notice of claim, and certificate must be sufficiently accurate to identify the property assessed with reasonable certainty¹ to enable the owner readily to identify it as his or hers and to furnish a basis for the tax lien and for a proceeding in rem against the tract should that become necessary for the collection of the tax.² Where the assessment wholly fails to lead to identification, so that neither the owner nor the officer can tell that the land is taxed, the duty of payment cannot be performed, and the assessment is void.³ However, not every defect of description on an assessment roll will invalidate a tax assessment.⁴ If the assessment describes the land in such way as to afford the owner the means of identification, and not to mislead the owner, that is sufficient.⁵ While a description merely stating the number of acres to be taxed is insufficient to support an assessment,⁶ a description which states the acreage and the abutting owners at the cardinal compass points may be sufficient.⁷ Moreover, an assessment for taxation is not void because the property is inadequately described where all parties acted upon a common understanding as to the identity of the property.⁸

Observation:

Where the taxpayer owns no other land in town, he or she could not be misled by the assessor's minor inaccuracy in describing a boundary of parcel the in the assessment records.⁹

An assessment of personal property need not describe the items of property assessed in detail, and an assessment in general terms of money and all other personal property is sufficient.¹⁰

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Footnotes

- 1 [Fickett v. Hohlfeld](#), 390 A.2d 469 (Me. 1978).
- 2 [Brophy v. Commonwealth](#), 134 Va. 250, 114 S.E. 782 (1922).
- 3 [National Cemetery Ass'n of Missouri v. Benson](#), 344 Mo. 784, 129 S.W.2d 842, 122 A.L.R. 893 (1939).
- 4 [Plymouth United Sav. Bank v. Plymouth Tp.](#), 289 Mich. 307, 286 N.W. 625 (1939).
- 5 [Plymouth United Sav. Bank v. Plymouth Tp.](#), 289 Mich. 307, 286 N.W. 625 (1939).
- 6 [Manby v. Voorhees](#), 27 N.M. 511, 203 P. 543 (1921).
- 7 [Inhabitants of Town of Warren v. Norwood](#), 138 Me. 180, 24 A.2d 229 (1941).
- 8 [L.W. Blinn Lumber Co. v. Los Angeles County](#), 216 Cal. 474, 14 P.2d 512, 84 A.L.R. 1304 (1932) (overruled on other grounds in part by, [De Luz Homes v. County of San Diego](#), 45 Cal. 2d 546, 290 P.2d 544 (1955)).
- 9 [Fickett v. Hohlfeld](#), 390 A.2d 469 (Me. 1978).
- 10 [Johnson City v. Press, Inc.](#), 171 Tenn. 80, 100 S.W.2d 657 (1937).

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72 Am. Jur. 2d State and Local Taxation § 632

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Part Nine. Assessment and Levy

XXXIX. General Considerations

F. Assessment Rolls and Books

§ 632. Description of property—Abbreviations

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2108, 2587 to 2592

The mere employment of abbreviations in the description of land on the tax roll does not invalidate the assessment.¹ Abbreviations and figures may properly be used in descriptions in the assessment rolls if they are familiar, easily understood, not misleading, and indicate the thing intended with certainty.² However, the use of abbreviations or figures not used by conveyancers or not generally understood by the public at large may render the description insufficient.³

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Footnotes

- ¹ [Plymouth United Sav. Bank v. Plymouth Tp.](#), 289 Mich. 307, 286 N.W. 625 (1939).
- ² [Addison v. Benedict](#), 225 So. 2d 335 (Fla. Dist. Ct. App. 2d Dist. 1969).
- ³ [Crawford v. Rehwinkel](#), 121 Fla. 449, 163 So. 851 (1935).

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72 Am. Jur. 2d State and Local Taxation § 633

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Part Nine. Assessment and Levy

XXXIX. General Considerations

F. Assessment Rolls and Books

§ 633. Description of property—Reference to map, plat, or survey

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2108, 2587 to 2592](#)

In determining the sufficiency of a description of land for tax purposes by reference to a map or plat, the description must be such as will enable the identification of the property by prospective purchasers, by the owner, or by the owner and prospective purchasers.¹ A description of land by reference to a map or plat may be sufficient under a statute authorizing a description by that method,² including a description according to the general system of numbering lots, blocks, and sections.³

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Footnotes

- 1 [Conway v. Mosher](#), 55 Ariz. 307, 101 P.2d 209 (1940); [McDonough v. Everett](#), 237 Mass. 378, 129 N.E. 681 (1921) (prospective purchasers); [Ferguson v. Mathis](#), 96 Utah 442, 85 P.2d 827 (1938) (by owner and prospective purchasers).
- 2 [Choctaw, O. & G. R. Co. v. Mackey](#), 256 U.S. 531, 41 S. Ct. 582, 65 L. Ed. 1076 (1921).
- 3 [Furrey v. Lantz](#), 162 Cal. 397, 122 P. 1073 (1912).

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Part Nine. Assessment and Levy

XL. Persons and Property Assessable

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Taxation](#) 🔑 2477, 2479, 2481, 2483

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Forms

[Am. Jur. Legal Forms 2d § 238:11](#)

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72 Am. Jur. 2d State and Local Taxation § 634

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Part Nine. Assessment and Levy

XL. Persons and Property Assessable

§ 634. Ownership, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2477

Generally, all property is subject to taxation unless a statute specifically exempts it.¹ In determining the ownership of property in a taxation context, substance will prevail over form.²

Definition:

Ownership, for the purposes of a general property tax, depends not on legal title³ but rather on the status of the owner of a beneficial interest in the property, and a determination of ownership is made by weighing the indicia of ownership of one party against the other.⁴ It is based on possession at the time that the property tax liability accrued⁵ but not by a prior owner or owner of an estate in expectancy or of an executory or contingent interest.⁶

One is the owner of property so as to be subject to taxation and the laws applicable thereto where he or she is in possession and entitled thereto under title although another has a lien on the premises.⁷ The holder of a determinable fee is to be regarded as the owner for the purpose of taxation or of exemption from taxation.⁸ The owner of property is the proper assessee even though

he or she leases the property to an exempt organization, such as the state.⁹ A mortgagee in possession of the property may be determined to be the owner to whom the property is assessable under a statute defining "owner" as including any person who has any right, title, estate, or interest other than that of a mere occupant.¹⁰ However, the seller under a conditional sales contract who retains only a security interest in the property is not assessable since his or her interest in the property, as opposed to his or her intangible interest in the contract, has no value.¹¹

Observation:

Membership in a community association for a planned residential community and the holding of easements for the access to and use of common areas of a community do not constitute ownership of the common areas for taxation purposes.¹²

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Footnotes

- 1 [Evangelical Alliance Mission v. Department of Revenue, 164 Ill. App. 3d 431, 115 Ill. Dec. 492, 517 N.E.2d 1178 \(2d Dist. 1987\).](#)
- 2 [Friendship Village of Greater Milwaukee, Inc. v. City of Milwaukee, 181 Wis. 2d 207, 511 N.W.2d 345 \(Ct. App. 1993\).](#)
- 3 [Friendship Village of Greater Milwaukee, Inc. v. City of Milwaukee, 181 Wis. 2d 207, 511 N.W.2d 345 \(Ct. App. 1993\).](#)
- 4 [City of Franklin v. Crystal Ridge, Inc., 180 Wis. 2d 561, 509 N.W.2d 730 \(1994\).](#)
- 5 [Travelers Ins. Co. v. 633 Third Associates, 14 F.3d 114 \(2d Cir. 1994\).](#)
- 6 [Chapman Bros. v. Board of Review of City of Des Moines, 209 Iowa 304, 228 N.W. 28 \(1929\); Town of Wolf River, Langlade County v. Wisconsin Michigan Power Co., 217 Wis. 518, 259 N.W. 710, 98 A.L.R. 1369 \(1935\).](#)
- 7 [Town of Wolf River, Langlade County v. Wisconsin Michigan Power Co., 217 Wis. 518, 259 N.W. 710, 98 A.L.R. 1369 \(1935\).](#)
- 8 [Connecticut Junior Republic Ass'n v. Town of Litchfield, 119 Conn. 106, 174 A. 304, 95 A.L.R. 56 \(1934\).](#)
- 9 [County of Sacramento v. Assessment Appeals Bd. No. 2, 32 Cal. App. 3d 654, 108 Cal. Rptr. 434 \(3d Dist. 1973\).](#)
- 10 [Lane v. Wright, 121 Iowa 376, 96 N.W. 902 \(1903\).](#)
- 11 [County of Sacramento v. Assessment Appeals Bd. No. 2, 32 Cal. App. 3d 654, 108 Cal. Rptr. 434 \(3d Dist. 1973\).](#)
- 12 [Sun City Summerlin Community Ass'n v. State By and Through Dept. of Taxation, 113 Nev. 835, 944 P.2d 234 \(1997\).](#)

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Part Nine. Assessment and Levy

XL. Persons and Property Assessable

§ 635. Occupancy

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2477, 2479

Taxes should ordinarily be assessed to the real owner of the property without regard to temporary occupancy.¹ Whether a tract of land is seated or unseated depends upon what has been done or is being done upon it and upon the appearance which it may present to the eye of the assessor.² The assessor has nothing to do with misapprehensions or mistakes of the occupant but rather has as his or her business to return the land as seated if he or she finds upon it such permanent improvements as indicate a personal responsibility for its taxes or to return it as unseated if there be no such improvements.³

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Footnotes

- 1 [Application of Rosewell](#), 69 Ill. App. 3d 996, 26 Ill. Dec. 36, 387 N.E.2d 866 (1st Dist. 1979).
- 2 [Bannard v. New York State Natural Gas Corp.](#), 448 Pa. 239, 293 A.2d 41 (1972).
- 3 [Bannard v. New York State Natural Gas Corp.](#), 448 Pa. 239, 293 A.2d 41 (1972).

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72 Am. Jur. 2d State and Local Taxation § 636

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Part Nine. Assessment and Levy

XL. Persons and Property Assessable

§ 636. Separate assessment of different parcels belonging to same owner

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2481

Generally, different parcels of land in the same ownership are to be regarded as separate units for tax purposes and must be separately valued and assessed.¹ The mere fact that a taxpayer owns several contiguous, separately acquired lots does not require that taxes should be assessed on the lots as a single parcel.² Whether two or more adjoining tracts are situated so as to become separate estates for tax assessment purposes is a matter to be determined from all facts and circumstances of each case.³ Thus, when determining whether property should be assessed as a single parcel for tax purposes, the court considers whether the property was conveyed in one deed, the character of the land and the purposes for which it is used, whether the separately deeded tracts are contiguous, and whether the property currently functions as one tract for the owner.⁴ However, noncontiguous tracts cannot be grouped for a single assessment.⁵

Caution:

Adjoining parcels of property may be treated as one parcel for assessment purposes, even though the preceding owners treated the properties as two units and the city prepared separate tax bills for the two units, where the properties were historically part of one large parcel and were conveyed as one parcel to the preceding owners, and the zoning ordinance precluded a subdivision into two parcels.⁶

CUMULATIVE SUPPLEMENT

Cases:

Vacant parcels that bordered parcel contiguous to residential land could not satisfy contiguity requirement for taxation as residential land unless they physically touched another parcel containing a residential improvement that was integral part of the residential use. [Colo. Const. art. 10, § 3\(1\)\(b\)](#); [Colo. Rev. Stat. Ann. § 39-1-102\(14.4\)\(a\)](#). [Ziegler v. Park County Board of County Commissioners](#), 2020 CO 13, 457 P.3d 584 (Colo. 2020).

Property tax assessor and Board of Assessment Appeals (BAA) could not rely on taxpayers' possible future conveyance of lot as separate unit when deciding whether to reclassify lot from vacant land to residential, absent any reference to how that possibility related to taxpayers' current use of lot. [Colo. Rev. Stat. Ann. § 39-1-102\(14.4\)\(a\)](#). [Mook v. Board of County Commissioners of Summit County](#), 2020 CO 12, 457 P.3d 568 (Colo. 2020).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Edward Rose Bldg. Co. v. Independence Tp.](#), 436 Mich. 620, 462 N.W.2d 325 (1990).
In an appeal of a town's tax assessment of a taxpayer's two non-adjoining parcels of property, the board of tax and land appeals could not reject property appraisals submitted by the taxpayer on the basis that the taxpayer's appraisals, which assessed the value of the two parcels separately, did not contain a highest and best use analysis of the parcels by failing to consider the combined value of the parcels because the parcels were required to be assessed separately under the statute governing the appraisal of separate tracts of property. [In re Johnson](#), 161 N.H. 419, 13 A.3d 315 (2011).
As to the assessment of separate interests in a single property, see [§ 637](#).
As to the single assessment of separate parcels belonging to different owners, see [§ 638](#).
- 2 [Neun v. Town of Roxbury](#), 150 Vt. 242, 552 A.2d 408 (1988).
- 3 [Fearon v. Town of Amherst](#), 116 N.H. 392, 360 A.2d 127 (1976).
- 4 [Neun v. Town of Roxbury](#), 150 Vt. 242, 552 A.2d 408 (1988).
- 5 [Bannard v. New York State Natural Gas Corp.](#), 448 Pa. 239, 293 A.2d 41 (1972).
- 6 [Appeal of Loudon Road Realty Trust](#), 128 N.H. 624, 517 A.2d 843 (1986).

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XL. Persons and Property Assessable

§ 637. Assessment of separate interests in single property

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Forms

[Am. Jur. Legal Forms 2d § 238:11](#) (Statement—Separate ownership of land and improvements)

When several persons jointly own property and an assessment is made against them as owners, it is essential to separate the amount of the liability of each owner.¹ The "unit assessment rule" prohibits multiple assessments on multiple taxpayers holding disparate interests in single piece of land.² However, the rule concerns only the final outcome of an assessor's task and does not preclude a separate valuation of multiple interests in the course of producing a single assessment.³ Thus, although a tax statute is not unconstitutional because the aggregate tax assessed against the land is computed by reference to the value of the property of more than one owner,⁴ and although there is no constitutional objection to separate assessment of the different interests in real estate,⁵ it is generally not the policy to require the assessors to tax the different estates and interests which may exist in a single parcel of land to the respective owners thereof but instead to base the assessment as a unit upon the sum of the interests.⁶

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¹ [Scanlan v. Gulf Bitulithic Co.](#), 44 S.W.2d 967, 80 A.L.R. 852 (Tex. Comm'n App. 1932).

- 2 Folsom v. County of Spokane, 111 Wash. 2d 256, 759 P.2d 1196 (1988).
3 Folsom v. County of Spokane, 111 Wash. 2d 256, 759 P.2d 1196 (1988).
4 New York Mobile Homes Ass'n v. Steckel, 9 N.Y.2d 533, 215 N.Y.S.2d 487, 175 N.E.2d 151, 86 A.L.R.2d 270 (1961).
5 Kentucky Union Co. v. Commonwealth of Kentucky, 219 U.S. 140, 31 S. Ct. 171, 55 L. Ed. 137 (1911).
6 Lee v. Carpenter, 132 So. 2d 433 (Fla. Dist. Ct. App. 2d Dist. 1961).

As to the separate assessment of different parcels belonging to the same owner, see § 636.

As to the single assessment of separate parcels belonging to different owners, see § 638.

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§ 638. Single assessment of separate parcels belonging to different owners

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Two parcels of land belonging to different owners cannot be jointly assessed although the two parcels are contiguous and are used together for a single purpose.¹ Thus, joint assessments for taxation of tracts of land belonging to different persons have been regarded as so contrary to the theory and intent of tax laws as to render them, and all subsequent tax proceedings, utterly void.² One of the most obvious practical objections to a joint assessment of separate tracts belonging to different owners is that neither owner can determine in what amount his or her land is assessed, and this objection may apply notwithstanding that the entire tract was assessed at a specified amount per acre.³

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Footnotes

- 1 [Howell v. Shannon](#), 80 Miss. 598, 31 So. 965 (1902).
As to the separate assessment of different parcels belonging to the same owner, see [§ 636](#).
As to the assessment of separate interests in a single property, see [§ 637](#).
- 2 [Laubersheimer v. Huiskamp](#), 260 Iowa 1340, 152 N.W.2d 625 (1967).
- 3 [Laubersheimer v. Huiskamp](#), 260 Iowa 1340, 152 N.W.2d 625 (1967).

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§ 639. Mineral rights

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When surface and mineral estates are owned by the same person, only one tax is assessed on the claim¹ because mining claims presumptively include both surface and mineral estates unless a severance has occurred.² However, an authorization of a separate assessment of mineral rights does not preclude a separate assessment of other rights which together may comprise fee simple ownership.³ In the case of privately owned land, the entire value of the mineral estate is taxable, and liability for the payment of taxes between the lessor and the lessee is a subject for agreement between them.⁴ Accordingly, it is essentially only a matter of bookkeeping whether the assessor assesses the entire mineral estate to the lessee or the lessor or assesses their interests separately.⁵

Where a mineral assessment is not joined to a fee assessment as required by law, the tax assessment is invalid, and the tax deed derived from the defective assessment is void.⁶

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Footnotes

- ¹ [United Park City Mines Co. v. Estate of Clegg](#), 737 P.2d 173 (Utah 1987).
- ² [United Park City Mines Co. v. Estate of Clegg](#), 737 P.2d 173 (Utah 1987).
As to minerals and mineral rights in general, see § 140.
- ³ [Macht v. Department of Assessments of Baltimore City](#), 266 Md. 602, 296 A.2d 162, 56 A.L.R.3d 1285 (1972).
- ⁴ [Cox Cable San Diego, Inc. v. County of San Diego](#), 185 Cal. App. 3d 368, 229 Cal. Rptr. 839 (4th Dist. 1986).
- ⁵ [Cox Cable San Diego, Inc. v. County of San Diego](#), 185 Cal. App. 3d 368, 229 Cal. Rptr. 839 (4th Dist. 1986).

6 [Dawdy v. Holt, 281 Ark. 171, 662 S.W.2d 818 \(1984\).](#)

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§ 640. Property held in trust

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Personal property in the hands of a trustee is assessable to the trustee rather than to the beneficiaries for the reason that the legal title is in the trustee.¹ Nonresident beneficiaries of a resident trust may be properly held subject to state income taxation on the income of a trust derived from intangible trust property where the trustee within the state exclusively holds, controls, and administers the corpus of the trust and has unlimited discretion in the investment of the trust principal and accumulations.²

Caution:

A taxpayer, who was designated as "Trustee" as the grantee in the sheriff's deed for the property, had standing to file a real property valuation complaint on the taxpayer's own behalf.³ The mere designation of the grantee as "Trustee" in the deed did not create a trust or make the grantee a trustee of a trust.⁴

- 1 Michigan Trust Co. v. City of Grand Rapids, 262 Mich. 547, 247 N.W. 744, 89 A.L.R. 840 (1933).
- 2 Matter of McCormac, 64 Haw. 258, 640 P.2d 282 (1982).
- 3 Gammarino v. Hamilton Cty. Bd. of Revision, 84 Ohio St. 3d 155, 1998-Ohio-715, 702 N.E.2d 415 (1998).
- 4 Gammarino v. Hamilton Cty. Bd. of Revision, 84 Ohio St. 3d 155, 1998-Ohio-715, 702 N.E.2d 415 (1998).

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§ 641. Property of decedents' estates

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[Construction and application of "pay-all-taxes" provision in will, as including liability of nontestamentary property for inheritance and estate taxes, 56 A.L.R.5th 133](#)

[Construction and effect of will provisions relied on as affecting payment of real or personal property taxes or income taxes, 70 A.L.R.3d 726](#)

After the death of a property owner, his or her property should be assessed to the person who succeeds to the title.¹ However, the executor or administrator may be personally and individually liable for the payment of taxes assessed against him or her in a representative capacity.²

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Footnotes

¹ [Pollitzer v. Beinkempfen, 76 S.C. 517, 57 S.E. 475 \(1907\).](#)

² [People v. Continental Illinois Nat. Bank & Trust Co. of Chicago, 360 Ill. 454, 196 N.E. 515 \(1935\); Bogue v. Laughlin, 149 Wis. 271, 136 N.W. 606 \(1912\).](#)

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